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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,989	02/17/2004	Lisa Starr	STRR/0004.C1	8890
26290	7590	02/28/2006	EXAMINER	
PATTERSON & SHERIDAN, L.L.P. 3040 POST OAK BOULEVARD SUITE 1500 HOUSTON, TX 77056			CHOI, STEPHEN	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/779,989	Applicant(s) STARR, LISA	
	Examiner Stephen Choi	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20, 24, 33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20, 24, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09 February 2006 has been entered.

Claim Objections

2. Claim 33 is objected to because of the following informalities: In claim 33, line 2, "a neck portion" should be --the neck portion--, lines 4-5, "an inner diameter" should be --the inner diameter--. It is noted that some recitations in claim 33 appear to be redundant of the recitations in claim 20. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 34, "the first and second elongated housing portions" lacks positive antecedent basis. Is "at least one of the ribs has an inner diameter..." in addition to at

least one inner rib set forth in claim 20? It is noted that some recitations in claim 34 appear to be redundant of the recitations in claim 20.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Lasich et al. (US 4,029,202).

Lasich discloses all the recited elements of the invention including an elongated housing member having an inner cavity, an open housing end, a closed housing end, and side walls having an outer housing surface and an inner housing surface (e.g., 13, 14), at least one inner rib (e.g., 23, inner surface of the element 14 forms at least a portion of the inner cavity and the element 23 circumscribes at least portion of the inner surface of the element 14), and a lid (e.g., 40). It is noted that the inner rib is capable of encircling and clamping a neck portion of an ampoule.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 20, 24, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morbeck (US 3,380,608) in view of Milton et al. (US 4,518,097).

Morbeck discloses the invention substantially as claimed including an elongated housing member including two sections (e.g., 11, 12) and having an inner cavity, a longitudinal housing axis (e.g., Figure 1), an open housing end (e.g., at 24, 25), a closed housing end (e.g., at 20, 21), side walls having an outer housing surface and an inner housing surface (e.g., 22, 23), and a lid (e.g., 16). Morbeck fails to disclose inner ribs as claimed. Milton teaches inner ribs wherein at least one of the ribs circumscribing at least a portion of an inner housing surface proximate an open housing end. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the inner ribs as taught by Milton on the device of Morbeck in order to add strength to container walls. It is noted that the inner rib of the modified device of Morbeck is capable of encircling and clamping a neck portion of an ampoule.

Response to Arguments

9. Applicant's arguments filed 09 February 2006 have been fully considered but they are not persuasive.

Applicant contends that the modified device of Morbeck does not teach the claims as amended requiring "the inner rib having an inner diameter capable of encircling and clamping a neck portion of an ampoule".

The newly added limitations "the inner rib having an inner diameter capable of encircling and clamping a neck portion of an ampoule" merely recite the manner in which a claimed apparatus is intended to be employed. The modified device of

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Morbeck satisfies the claimed structural limitations including the inner rib having an inner diameter and thus, capable of encircling and clamping the neck portion of the ampoule.


Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Choi whose telephone number is 571-272-4504. The examiner can normally be reached on Monday-Thursday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sc
23 February 2006


STEPHEN CHOI
PRIMARY EXAMINER